**BEFORE**
**THE PUBLIC SERVICE COMMISSION OF**
**SOUTH CAROLINA**

**DOCKET NO. 2018-318-E**

IN THE MATTER OF:

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| Application of Duke Energy Progress, LLC For Adjustments in Electric Rate Schedules and Tariffs and Request for an Accounting Order | ) ) ) ) | **REBUTTAL TESTIMONY OF JON F. KERIN FOR DUKE ENERGY PROGRESS, LLC** |

## I. INTRODUCTION

**Q. PLEASE STATE YOUR NAME, OCCUPATION, TITLE, AND BUSINESS ADDRESS.**

A. My name is Jon F. Kerin. My business address is 411 Fayetteville Street, Raleigh, North Carolina, 27601-1849. I am employed by Duke Energy Business Services, LLC, as Vice President, Coal Combustion Products ("CCP") Operations, Maintenance and Governance.

**Q. ON WHOSE BEHALF ARE YOU SUBMITTING THIS REBUTTAL TESTIMONY?**

A. I am submitting this rebuttal testimony on behalf of Duke Energy Progress, LLC ("DE Progress," or the "Company").

**Q. ARE YOU THE SAME JON KERIN WHO FILED DIRECT TESTIMONY IN THIS CASE?**

A. Yes.

**Q. PLEASE DISCUSS THE PURPOSE OF YOUR REBUTTAL TESTIMONY.**

A. The purpose of my rebuttal testimony is to address several issues discussed in the direct testimony of intervenors that are related to the Company's request to recover its compliance expenses for managing coal combustion residuals ("CCR"). Specifically, I will address issues raised in the testimonies of Office of Regulatory Staff ("ORS") Witness Dan J. Wittliff and South Carolina Energy Users Committee ("SCEUC") Witness Kevin W. O'Donnell.

**Q. PLEASE SUMMARIZE YOUR REBUTTAL TESTIMONY.**

A. Mr. Wittliff proposes serious and financially harmful disallowances of costs the Company has prudently incurred in closing ash basins. He proposes disallowing a total of $333,480,308 for Asheville, Cape Fear, H.F. Lee, Sutton, and Weatherspoon based on the mere fact that there is a state border running through the Company's service territory, failing to appropriately acknowledge the shared costs and benefits of the generation serving DE Progress' customers in South Carolina and North Carolina. In other words, the single basis for Mr. Wittliff's recommended disallowances is that DE Progress is complying with a North Carolina law (the Coal Ash Management Act or "CAMA"). Mr. Wittliff contends that South Carolina customers should not pay for that compliance because, in his view, CAMA is too expensive. This position, that South Carolina customers can enjoy all the savings of sharing power generation units with North Carolina customers but can ignore any legal compliance costs that he deems too expensive, would present grave harm to South Carolina customers if taken to its logical conclusion (which Company Witness Dr. Julius Wright will address in his rebuttal testimony). In addition to being bad policy with dire consequences to the State, Mr. Wittliff's disallowance methodology and recommendations are based on incorrect and unrealistic assumptions, and I will reveal these errors and flaws in my rebuttal testimony.

Mr. Wittliff also attempts to use this forum as new ground to rehash arguments before the Public Service Commission's ("PSC" or the "Commission") that were fully litigated in North Carolina and rejected by the North Carolina Utilities Commission ("NCUC") in DE Progress' and Duke Energy Carolinas, LLC's ("DE Carolinas") North Carolina rate cases (NCUC Docket No. E-2, Sub 1142; NCUC Docket No. E-7, Sub 1146). In those cases, Mr. Wittliff's arguments were essentially a smear campaign directed at the Company presumably to punish the Company for the Dan River incident—the costs of which are not being charged to South Carolina customers. In fact, approximately two-thirds of Mr. Wittliff's testimony rehashes the same "Duke Energy is bad" arguments that he submitted on behalf of the Attorney General's Office to the NCUC. Those arguments were fully litigated and, for good reasons, rejected in the North Carolina case. Moreover, such assertions are not relevant to his recommended disallowances in this case and the Commission should not have to spend multiple days of hearing time listening to them as the NCUC had to endure.

Similar to Mr. Wittliff, SCEUC Witness O'Donnell's coal ash testimony presents the same incorrect and rejected arguments that he made in the Company's North Carolina case. Like Mr. Wittliff, Mr. O'Donnell also contends that CAMA is more expensive than the federal CCR Rule and that South Carolina should be free to ignore any law that SCEUC deems to be too expensive. Mr. O'Donnell simply suggests that

a 75 percent disallowance of all the Company's coal ash compliance costs seems correct to him based on his perusal of what he contends are national coal ash compliance costs in other states. Notwithstanding the obvious invalidity of this position, I will explain the multiple errors that Mr. O'Donnell commits and will demonstrate why his "thumb in the air" method of cost recovery cannot and should not be taken seriously by this Commission.

## II. RESPONSE TO ORS WITNESS WITTLIFF

**Q. IN GENERAL, WHAT IS YOUR OVERALL IMPRESSION OF MR. WITTLIFF'S TESTIMONY?**

A. I do not believe that Mr. Wittliff's testimony is helpful to the Commission's assessment of DE Progress' reasonable and prudent coal ash expenses in this docket, and therefore should be rejected.

**Q. WHY DO YOU BELIEVE THAT MR. WITTLIFF'S TESTIMONY IS NOT USEFUL?**

A. Mr. Wittliff spends approximately four pages of his testimony discussing his engineering experience and his experience with coal ash, yet he offers no substantive engineering opinions. Mr. Wittliff's recommended disallowances are not based on any finding of imprudence regarding the Company's closure strategies or execution thereof. Instead, the disallowances are based entirely on a poor regulatory policy argument that the Company should not be able to recover expenses to comply with a North Carolina law. If the

Commission rejects Mr. Wittliff's poor policy argument, which it should, then none of Mr. Wittliff's testimony matters in this proceeding because every conclusion and recommendation that he reaches in his testimony is dependent on the Commission accepting that ill-founded argument.

**Q. HOW WOULD YOU CHARACTERIZE THE BULK OF MR. WITTLIFF'S TESTIMONY?**

A. The first thirty pages of Mr. Wittliff's testimony largely mirror his testimony in the North Carolina case and the rhetoric recycled in those pages has nothing at all to do with the theory that he is attempting to advance here. He discusses the evolution of environmental regulations relating to CCR, historic utility industry practices for managing CCR, the Company's historic management practices, and the genesis of CAMA. None of this testimony, however, is relevant to Mr. Wittliff's substantive recommendations to this Commission. While I vehemently disagree with Mr. Wittliff's mischaracterizations of the industry's and the Company's CCR management practices, they are not relevant to the Company's request to recover its compliance costs in this case.

**Q. WHY DO YOU SAY THAT THE BULK OF MR. WITTLIFF'S TESTIMONY IS IRRELEVANT?**

A. ORS's single recommendation to the Commission is to disallow costs that the Company has incurred to comply with North Carolina law, the CAMA. Mr. Wittliff insinuates that DE Progress caused CAMA, which

was an argument that completely failed in North Carolina and for good reason. Nonetheless, Mr. Wittliff has apparently seen fit to raise this argument again here.[1] However, what is missing from Mr. Wittliff's testimony is most important. He does not allege that CAMA is a punitive law nor can he, because it is not. He does not allege that CAMA is an unreasonable or excessive law for North Carolina or if adopted elsewhere, because it is not. He does not allege that CAMA reflects bad environmental policy, nor can he, because it does not. Nor does he allege that CAMA's closure requirements conflict with the closure options available under the EPA's CCR Rule, nor can he, because they do not. Further, he does not allege that the Company took any imprudent or unreasonable action to comply with CAMA and the CCR Rule, nor can he, because it did not. Therefore, Mr. Wittliff's discussion of the Company's CCR management history is irrelevant to his recommended disallowances and is just a distraction from his flawed and irresponsible theory of disallowance.

**Q. ARE YOU ADDRESSING REGULATORY IMPLICATIONS OF THE ORS'S RECOMMENDED DISALLOWANCE POLICY?**

A. No, not directly. Company Witness Dr. Wright discusses the regulatory implications and flaws of ORS's recommended disallowance policy for

[1] *See Order Accepting Stipulation, Deciding Contested Issues and Granting Partial Rate Increase*, Docket No. E-2, Sub 1142 at 196-99 (NCUC February 23, 2018); *Order Accepting Stipulation, Deciding Contested Issues, and Requiring Revenue Reduction,* Docket No. E-7, Sub 1146 at 270-72 (NCUC June 22, 2018).

CCR expenses in his rebuttal testimony, but I do not need to be a policy expert or a lawyer to know that Mr. Wittliff poor policy proposal lacks fundamental fairness.

**Q. DO YOU HAVE ANY GENERAL OBSERVATIONS REGARDING MR. WITTLIFF'S DISALLOWANCE TESTIMONY?**

A. Yes. At the outset, I will note that Mr. Wittliff's proposed specific disallowances are entirely dependent on speculating what the Company hypothetically would or would not have done in the absence of CAMA. That is not reality, and the reasonableness and prudence of the Company's costs should be judged in light of actual circumstances.

It is easy for Mr. Wittliff to provide a simple, conclusory opinion that things would be different if CAMA did not exist. What Mr. Wittliff did not do, and cannot do, is state with any certainty how exactly things would have played out in his alternate reality. Mr. Wittliff's testimony is built on speculation: "the CAMA rules resulted in costs exceeding what *would* have been the costs under the Federal CCR Rules alone." (Wittliff Direct 30:12-13) (emphasis added). He should be held to his own standard. (Wittliff Direct 32:15 ("speculation…should not be considered in this proceeding")). Keeping this in mind, I address the flawed assumptions upon which Mr. Wittliff's recommended disallowances are based and will demonstrate that his suggested disallowances (totaling $333,480,308 – Asheville ($98,220,932), Cape

Fear ($33,631,199), H.F. Lee ($9,207,711), Sutton ($186,376,226), and Weatherspoon ($6,044,240)) are unfounded.

**Q. PLEASE SUMMARIZE MR. WITTLIFF'S BASIS FOR A DISALLOWANCE OF CERTAIN ASHEVILLE CCR COSTS.**

A. Mr. Wittliff argues that, while the timing of closure at Asheville was not affected by CAMA, the Company's closure method was influenced by CAMA, thereby increasing costs. He then apparently suggests that the Company could have closed its Asheville basins by capping them in place, as opposed to excavation. He then attempts to quantify the alleged premium imposed by CAMA to serve as his recommended disallowance for the site.

**Q. HOW DO YOU RESPOND TO MR. WITTLIFF'S RECOMMENDED DISALLOWANCE FOR ASHEVILLE COSTS?**

A. I would first note that Mr. Wittliff's testimony regarding Asheville is self-contradictory and difficult to follow, which has made it difficult to identify specific arguments for me to rebut. For example, throughout his discussion of Asheville, Mr. Wittliff conflates two distinct closure methodologies: "cap-in-place" and excavation. Mr. Wittliff recommends that the Company be allowed to recover costs for engineering and planning "and for cap-in-place disposal". Yet, at the same time, he argues that there "would have been ample room for on-site disposal of ash impounded at Asheville," a fact that is irrelevant if

he contends that the site should have been capped in place. (Wittliff Direct 40:19; 41:1-3). Further compounding the confusion created by his testimony, Mr. Wittliff uses DE Progress' Robinson site, where ash is to be placed in an "on-site landfill rather than capped in place", as a comparison site to Asheville, which again contradicts his argument for the Asheville site. (Wittliff Direct 41:18).

**Q. ARE THERE ANY ADDITIONAL FLAWS IN MR. WITTLIFF'S TESTIMONY REGARDING ASHEVILLE?**

A. Mr. Wittliff's testimony lacks any factual support for his alternative closure proposals and does not demonstrate any analysis of site-specific conditions, including: engineering analysis demonstrating the technical and practical feasibility of cap-in-place or an onsite landfill; the precise location and size of an on-site landfill; cost estimates for cap-in-place or an on-site landfill; permitting requirements for cap-in-place or an on-site landfill; or the likelihood of obtaining requisite federal, state and local permitting approval for cap-in-place or an on-site landfill. Had Mr. Wittliff attempted to investigate any of these factors, he would have found that excavation is the proper closure method for the Asheville site, regardless of CAMA, due to site specific conditions. Seismic conditions in the area would have prevented cap-in-place from being a viable permanent closure solution at Asheville. Additionally, the Company had started excavation at the Asheville site before CAMA was enacted to provide ash for recycled use at construction projects such as

the Asheville airport. Mr. Wittliff's testimony is devoid of any necessary analysis, and his recommended disallowance for Asheville should be rejected.

**Q. PLEASE SUMMARIZE MR. WITTLIFF'S BASIS FOR A DISALLOWANCE OF ALL CAPE FEAR CCR COSTS.**

A. Mr. Wittliff argues that the Company is only closing the ash basins at Cape Fear because it is required to do so under CAMA. If CAMA did not exist, he argues, the Company would only be required to comply with the federal CCR Rule and would have left the ash basins at Cape Fear untouched indefinitely. Accordingly, he recommends a disallowance of all Cape Fear compliance costs incurred to-date.

**Q. HOW DO YOU RESPOND TO MR. WITTLIFF'S RECOMMENDED DISALLOWANCE FOR CAPE FEAR COSTS?**

A. Mr. Wittliff's recommended disallowance of Cape Fear expenses should be rejected because his position defies belief when considered in the context of the real world[2]. The suggestion that DE Progress could or would have taken a "do nothing" approach to Cape Fear's ash basins, while at the same time closing all of its other ash basins in South Carolina and North Carolina, defies regulatory reality. Arguing this "do

[2] I again note that my testimony here factually rebutting Mr. Wittliff's arguments is not an acceptance of his flawed policy suggestion that CAMA requirements can simply be ignored. Rather, my testimony demonstrates that Mr. Wittliff's theories fail no matter how ones considers them.

nothing" approach would have been reasonable and accepted by regulators and stakeholders for Cape Fear's inactive CCR units, when similar inactive ash storage areas at the Company's Robinson station and DE Carolinas' W.S. Lee station were being excavated, is an absurd proposition. In fact, under Mr. Wittliff's faulty logic, it follows that South Carolina customers should refund North Carolina customers all money spent for excavating ash from the inactive basins at the Robinson and W.S. Lee sites in South Carolina because they were otherwise exempt from the CCR Rule.

Additionally, Mr. Wittliff acknowledges that after the CCR Rule was promulgated containing the provision that excluded retired ash basins such as those present at the Cape Fear and the W.S. Lee sites, the EPA was sued in 2015. That lawsuit alleged, among other things, that the exclusion of inactive CCR surface impoundments at retired power plants from the CCR Rule was arbitrary and capricious because it failed to meet the Resource Conservation and Recovery Act's ("RCRA") standard of "no reasonable probability of adverse effects." In August 2018, the United States Court of Appeals for the District of Columbia Circuit found "the Rule's legacy ponds exemption is unreasoned, arbitrary, and capricious" and vacated and remanded these provisions of the CCR Rule to EPA. As a result, EPA will have to affirmatively undertake regulatory changes to the CCR Rule to implement the court's judgment, including adding new provisions to the rule specifically

regulating legacy impoundments. Although Mr. Wittliff acknowledges this lawsuit and rulemaking, he tells the Commission to ignore these real-world facts and only focus on his hypothetical view of how the world may have turned out had CAMA never been passed.

**Q. PLEASE SUMMARIZE MR. WITTLIFF'S BASIS FOR A DISALLOWANCE OF H.F. LEE CCR COSTS.**

A. Mr. Wittliff states that the Company is beneficiating ash at the H.F. Lee site only because of CAMA, which is true. He then argues that beneficiation is not a requirement under the federal CCR Rule; therefore, the Company should not be able to recover costs related to beneficiation at Cape Fear.

**Q. DO YOU TAKE ISSUE WITH HOW MR. WITTLIFF ATTEMPTED TO QUANTIFY CAMA COSTS AT H.F. LEE?**

A. Yes. In his testimony (page 36, lines 20-23), Mr. Wittliff states that based on his visit to the H.F. Lee site it "appears" that most of the work he saw looks like beneficiation work and therefore recent costs at the site must be for beneficiation. This, of course, is not a valid method of determining costs.

**Q. DOES CAMA'S BENEFICIATION REQUIREMENT RESULT IN INCREASED COSTS FOR SOUTH CAROLINA?**

A. No. In total, for both DE Progress and DE Carolinas, CAMA's beneficiation requirement actually results in a net savings for South Carolina. Between DE Progress and DE Carolinas, the Company

selected three sites for beneficiation projects: H.F. Lee (DE Progress), Cape Fear (DE Progress), and Buck (DE Carolinas). Those sites were selected based on the quality and quantity of ash present at the site; logistical factors; and proximity to relevant markets where the beneficiated ash can be sold. The ash basins at those sites are being closed by excavation, and the ash is being beneficiated as opposed to being disposed in permitted landfills. For the H.F. Lee and Cape Fear sites, beneficiation under CAMA is providing an estimated net savings compared to closure without beneficiation of approximately $703 million on a total system basis. Mr. Wittliff and the ORS appear to have overlooked this fatal flaw to their policy argument that CAMA be ignored as if it never existed. Under their theory, if South Carolina customers will not pay costs associated with CAMA, then they fairly cannot enjoy the superior savings afforded by CAMA beneficiation at the H.F. Lee and Cape Fear sites and would owe North Carolina customers a net refund for those costs savings. This demonstrates how the ORS's ill-advised policy of ignoring laws it does not like creates absurd results in the real world.

**Q. IS CAMA'S BENEFICIATION REQUIREMENT UNREASONABLE AS SUGGESTED BY MR. WITTLIFF?**

A. No. DE Progress' and DE Carolinas' beneficiation projects at H.F. Lee, Cape Fear, and Buck utilize technology that was first deployed and approved in South Carolina at SCANA coal ash facilities.

**Q. PLEASE SUMMARIZE MR. WITTLIFF'S BASIS FOR A DISALLOWANCE OF SUTTON CCR COSTS.**

A. Mr. Wittliff argues that, absent CAMA, DE Progress could have started closure of Sutton's CCR units later than when it did. He then recommends that the Commission disallow the Company's site closure costs that were incurred earlier than they allegedly would have been absent CAMA.

**Q. HOW DO YOU RESPOND TO MR. WITTLIFF'S RECOMMENDED DISALLOWANCE FOR SUTTON COSTS?**

A. Mr. Wittliff does not appear to take issue with the closure strategy or the types of closure costs at Sutton, since he suggests that the Company could recover its construction and transportation costs in the future. Instead, Mr. Wittliff disputes the timing of the Company's costs, which is based on his apparent assumption that the price of labor, supplies, materials, and equipment gets cheaper as time passes and demand increases. This assertion, of course, defies common sense.

**Q. IS MR. WITTLIFF'S PROPOSED TIMELINE FOR SUTTON CLOSURE BASED ON CORRECT ASSUMPTIONS?**

A. No. Mr. Wittliff's recommended disallowance should be rejected in its entirety because it is based on two demonstrably false assumptions: 1) that "Sutton closure was directed by CAMA and the North Carolina orders" and 2) "that the CCR rules would not have required closure actions at Sutton to even commence until October 31, 2020."

As to Mr. Wittliff's first error, Sutton's ash ponds did not meet wetlands or aquifer location restrictions under the CCR Rule.[3] Therefore, the closure of Sutton under the CCR Rule was triggered based on those CCR standards and not CAMA as Mr. Wittliff contends.

Next, Mr. Wittliff incorrectly concludes that under the CCR Rule, the Company would not have commenced closure at Sutton until October 31, 2020. (Wittliff Direct 38:4-7). Closure deadlines under the CCR Rule were set with the last placement of waste streams in Sutton's basins, which occurred on July 6, 2016. The July 2016 trigger date is explicitly referenced in Kerin's Exhibit 10, but was ignored or missed by Mr. Wittliff in his testimony.

Therefore, given the fact that Mr. Wittliff's entire disallowance for Sutton depends on his assumptions that CAMA dictated the closure timing at Sutton, which it did not, and that closure would not have commenced until 2020, which is also incorrect, the Commission should reject Mr. Wittliff's entire disallowance for Sutton.

**Q. WOULD MR. WITTLIFF'S PROPOSED TIMELINE FOR SUTTON CLOSURE UNDER THE CCR RULE HAVE REDUCED CLOSURE COSTS?**

A. No. Even if one accepts Mr. Wittliff's incorrect allegation that CAMA accelerated DE Progress' closure timing at Sutton, an extended closure

[3] This information was provided to ORS in discovery and is posted online for the general public. *See* https://www.duke-energy.com/our-company/environment/compliance-and-reporting/ccr-rule-compliance-data.

schedule, as proposed by Mr. Wittliff, would actually result in higher total project costs for that site. These higher costs would be attributable to increased overhead and changing market conditions, like vendor and resource availability. The Company is ahead of most utilities in the region in terms of its progress in achieving ash basin closure. If the Company delayed its closure and extended the closure schedule as proposed by Mr. Wittliff, it would be competing with other utilities for limited, experienced vendors and specialized resources. In fact, the Company has seen these real-world price increases take place, a fact that Mr. Wittliff ignores in his hypothetical version of reality. For example, over the past three years labor costs for truck drivers and equipment operators have increased eight and nine percent, respectively.

**Q. PLEASE SUMMARIZE MR. WITTLIFF'S BASIS FOR A DISALLOWANCE OF WEATHERSPOON CCR COSTS.**

A. Mr. Wittliff agrees with the Company's decision to close Weatherspoon's basins by excavation. He also agrees with the Company's timeline for closing Weatherspoon. In fact, his only disagreement with the Weatherspoon closure is his contention that the Company is beneficiating ash from that site under the North Carolina CAMA provisions." (Wittliff Direct 42:21-23).

**Q. HOW DO YOU RESPOND TO MR. WITTLIFF'S RECOMMENDED DISALLOWANCE FOR WEATHERSPOON COSTS?**

A. Mr. Wittliff is wrong again. DE Progress is not beneficiating ash under CAMA at Weatherspoon as Mr. Wittliff suggests and instead is selling raw, unprocessed ash to buyers who can use it to offset some of the costs for closing that site.[4] CAMA required the Company to select three sites for the installation of ash beneficiation equipment to process ash into a refined product. As discussed above, those sites are H.F. Lee, Cape Fear, and Buck (DE Carolinas). Weatherspoon does not qualify as a beneficiation site under CAMA and the suggestion that the Company's ash disposal efforts at Weatherspoon are required by CAMA is wrong.

**Q. DOES MR. WITTLIFF SAY WHAT THE COMPANY SHOULD HAVE DONE INSTEAD OF REUSING THE WEATHERSPOON ASH?**

A. No, nor does he criticize the Company's closure of Weatherspoon by excavation. Instead, Mr. Wittliff questions the logic of CAMA's beneficiation requirement which he erroneously believes applies to this site.

[4] It is also worth noting that the CCR Rule encourages beneficiation

**Q. HAS MR. WITTLIFF PROVIDED ANY JUSTIFICATION FOR THE COMPANY ADOPTING AN ALTERNATIVE DISPOSAL OPTION?**

A. No.

**Q. HAS THE COMPANY SELECTED THE MOST COST EFFECTIVE, FEASIBLE DISPOSAL STRATEGY FOR WEATHERSPOON?**

A. Yes. The Company initially selected an offsite landfill option for Weatherspoon whereby ash would be excavated and moved to a landfill disposal offsite. The estimated costs for this disposal strategy were contained in the Company's 2016 ARO and totaled approximately $232 million. Subsequently, DE Progress sought bids for reuse options for the ash at Weatherspoon and was able to secure a contract to provide ash to cement kilns in South Carolina for use in the construction industry. That decision has resulted in approximately $23 million in estimated costs savings for DE Progress' customers compared to what they would have otherwise paid. By all accounts then, it appears that Mr. Wittliff does not want South Carolina customers to have their fair share of these savings.

**Q. DO YOU HAVE ANY OTHER CRITICISMS OF MR. WITTLIFF'S TESTIMONY REGARDING WEATHERSPOON?**

A. Yes. He estimates that three-fourths of the Weatherspoon costs in 2017 were attributable to "engineering and planning" without providing any

basis or conducting any apparent investigation as to what actual costs are. He then estimates that half of fourth quarter 2017 and half of the first three quarters of 2018 were attributable to the CCR Rule, again without any basis. Compounding his problems, Mr. Wittliff arrives at a disallowance number that is not connected to any specific activities or costs at the site. Thus, his disallowance numbers are a product of fiction and have no basis in the actual facts in this matter.

## III. RESPONSE TO SCEUC WITNESS O'DONNELL

**Q. WITNESS O'DONNELL RECOMMENDS A DISALLOWANCE OF 75% of CCR EXPENSES BASED ON WHAT HE CALLS A NATIONAL COMPARISON OF CCR ASSET RETIREMENT OBLIGATION (ARO) AMOUNTS. DO YOU AGREE WITH HIS CONCLUSIONS?**

A. No, I do not. Mr. O'Donnell has simply repackaged his failed inflammatory theory from DE Progress' North Carolina rate case. Mr. O'Donnell's "analysis" has the same significance of taking a list of home sales prices from around the Southeast and the country without regard to the size, location, features, or age of the houses; listing them out in order of greatest to least cost; and then concluding that houses in certain areas of the country are overpriced because they are not the same as house prices in other places in America. While Mr. O'Donnell claims that he has taken fair measures to make his comparison of national CCR ARO amounts valid (such as applying a random 65 percent capacity

factor to coal plants located at various CCR sites), I do not see where Mr. O'Donnell has accounted for or even considered the following factors in his analysis:

a. The number of coal plants in the Company's fleet;

b. The type of coal plants in the Company's fleet;

c. The age of the plants in the Company's fleet;

d. The amount of coal at each of the plants in the Company's fleet;

e. The type of coal used in each of the plants in the Company's fleet;

f. The actual MW capacity of each coal plant, over their lifetime considering plant upgrades that may have occurred adding generation;

g. The type of environmental controls, if any, installed on the plants in the Company's fleet (*e.g.*, electrostatic precipitators, flue gas desulfurization);

h. Whether any plants in the company's fleet utilize dry ash handling;

i. Whether any CCRs generated from the plants in the Company's fleet are being sold for beneficial reuse;

j. The type of CCR basins in the Company's fleet;

k. The location of the CCR basins in the Company's fleet;

l. Whether other utilities have closed some of their coal ash basins;

m. Soil and other geologic conditions of the CCR basins in the Company's fleet;

n. State specific laws applicable to CCR basins in the Company's fleet;

o. Regulatory rules and regulations for each state applicable to the CCR costs and AROs in Table 8 of his testimony;

p. Whether any CCR costs have been excluded from the ARO amounts listed in Table 8 of his testimony (*e.g.*, write-offs);

q. ASPE Cost Estimate Classifications for each ARO amount stated in Table 8 of his testimony;

r. Macro-level assumptions used by each company in deriving the ARO amounts (*e.g.*, basin closure dates, closure methods, etc.);

s. The scope of work assumed in each ARO estimate;

t. Any contracts, RFPs, RFIs, or bidder responses for work to be performed;

u. Comparisons of actual, to-date costs to projected costs in the AROS when considering recently passed or proposed legislation;

v. Whether any CCR basins were excluded from the ARO amount (e.g. not subject to the federal CCR Rule) and if so, why; and

w. The amounts and types of CCRs in the basins for each company.

Without consideration of these elements, I do not see any reasonable basis for taking Mr. O'Donnell's recommendation seriously.

Further, many of the figures that Mr. O'Donnell uses in his comparison appear to be unreasonable on their face. For example, Mr. O'Donnell's SNL data shows Ohio Power Company's ARO to be $1.66 million. Even if it is assumed that Ohio Power used cap in-place for its ash basins, $1.66 million is a wildly unreasonable estimate for covering hundreds of acres of ash.

In addition to using incorrect figures in his "analysis," Witness O'Donnell did not consider the fact that the other utilities he listed in his testimony are in very different stages within their coal ash management timeline than DE Progress, as discussed in the rebuttal testimony of Dr. Wright. Witness O'Donnell mistakenly takes the ARO data he copied from SNL as gospel, as opposed to characterizing them for what they are, which are rough estimates. If Mr. O'Donnell had gone behind the numbers, he would likely have discovered that there is substantial uncertainty about the level of actual closure costs of many of the utilities listed. For example, his analysis does not consider legislation that was recently passed by the Virginia General Assembly that will significantly increase closure costs for Virginia Electric and Power Company ("VEPCO" d/b/a Dominion Energy). This legislation requires VEPCO to excavate all of its basins located in the Chesapeake Bay Watershed after the company had already submitted closure plans calling for cap-in-place at most of these sites. The total estimated costs for VEPCO to close these basins is $5.2 billion to $8.6 billion, which

reflects an 897 to1,314 percent increase from the ARO estimate cited by Mr. O'Donnell for that company.

A further consideration that is absent from Mr. O'Donnell's table is that closure costs (such as labor, trucking) will vary greatly based on geographic regions, supply and demand, timing of closure, and many other factors that would have to be normalized to develop an accurate comparison (if it is even possible). DE Progress is much farther along in the closure process than most other utilities in other states. As a result, the comparison Mr. O'Donnell is trying to draw provides no value to this case.

I therefore recommend that the Commission determine the reasonableness of DE Progress' ARO amount on its own merits based on the facts in this case.

**Q. DO YOU BELIEVE THAT SCEUC WITNESS O'DONNELL HAS A CREDIBLE BASIS FOR SAYING THAT DE PROGRESS' COAL ASH AROS ARE HIGHER THAN AROS FOR UTILITIES IN OTHER STATES BECAUSE OF CAMA?**

A. No. Witness O'Donnell made no attempt to quantify DE Progress' coal ash AROs resulting from CAMA, as compared to its obligations under the CCR Rule. Nor did he attempt to determine the impetus for coal ash AROs for the other utilities to which he compares DE Progress. Since Mr. O'Donnell cannot attribute any specific ARO coal ash costs to CAMA and cannot attribute ARO coal ash costs for other companies to

any particular regulatory obligation, he cannot credibly testify that DE Progress' ARO coal ash costs are higher because of CAMA, even if that fact were relevant to this proceeding, which it is not.

**Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

A. Yes.